

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

NOAH BEVERLY,

Petitioner,

v.

CASE NO. 2:05-CV-735
CRIM. NO. 2:99-CR-104(2)
JUDGE GRAHAM
Magistrate Judge King

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

On September 20, 2006, the Magistrate Judge issued a *Report and Recommendation* recommending that all of petitioner's claims, with the exception of his claim that his sentence violated *Blakely v. Washington*, 542 U.S. 296 (2004), be dismissed. As to the *Blakely* claim, the Magistrate Judge directed further briefing. Petitioner objects to the recommendation that most of his claims be dismissed. Doc. No. 224. In his objections, petitioner again raises all of the same arguments that were previously presented. Petitioner also expressly objects to the Magistrate Judge's recommendation regarding his claim of ineffective assistance of trial counsel due to his attorney's alleged failure to pursue a plea agreement. That recommendation was based, at least in part, on a letter from petitioner to his trial attorney in which petitioner acknowledged that his trial attorney had recommended that petitioner enter a guilty plea but that he had "absolutely no intention of pleading guilty." *Report and Recommendation*, at 17. Petitioner states in his objections that he is illiterate and complains that there is no "official verification" that he wrote the letter. *Objections*, at 3. Significantly, petitioner does not deny that he either wrote the letter or caused it to be written

on his behalf. Petitioner again argues that an evidentiary hearing is warranted to resolve this and all other issues raised in the petition.

This Court is not persuaded by petitioner's arguments. The Court specifically agrees with the Magistrate Judge's conclusion that, in view of the overwhelming evidence that petitioner's trial counsel discussed the possibility of a plea with him but that petitioner refused to consider any plea offer and insisted on proceeding to trial, his claim that his trial attorney was ineffective in failing to pursue a plea agreement, supported only by petitioner's conclusory, after-the-fact affidavit, is without merit.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of all those portions of the *Report and Recommendation* objected to by petitioner. For the reasons detailed in the *Report and Recommendation*, petitioner's objections are **OVERRULED**.

The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. All of petitioner's claims, with the exception of his claim that his sentence violated *Blakely*, are **DISMISSED**.

It is so ORDERED.

s/James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: November 28, 2006